



Environmental Management Services Compar
2301 Research Boulevard, Suite 103
Fort Collins, CO 80526
(303) 482-3100 • Fax: (303) 482-9619

September 6, 1995

Mr. Noel Bennett
U.S. Environmental Protection Agency
Region 6
Superfund Division (6SF-AO)
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: Time-Critical Removal Action at the Tar Creek Site, Ottawa County, Oklahoma

95 SEP - 7 PM 12:06
000543
1

Dear Mr. Bennett:

This letter is being submitted on behalf of ASARCO Inc., Childress Royalty Company, Inc., Gold Fields Mining Corp./Blue Tee Corp. and The Doe Run Company (the Companies) in response to the Notice Letter dated August 25, 1995 from Mr. Myron O. Knudson concerning U.S. Environmental Protection Agency's (EPA's) plan to conduct a time-critical removal action at certain High Access Areas (HAAs) located within the Tar Creek Superfund Site.

As previously stated verbally to EPA, for the Companies to be willing to consider taking action, on a site-by-site basis, the scientific evidence must demonstrate that there is a real threat to human health, the cause of which is associated with operations or activities of the Companies. The Companies do not believe that the planned time-critical removal action at the twenty-eight (28) HAAs shown on Attachment 4 to the previously referenced Notice Letter meets either of these criteria and, therefore, the Companies respectfully decline EPA's offer to conduct or finance the planned removal action.

As you know, the Companies had requested and EPA had granted a meeting to discuss the technical aspects of the planned removal action in advance of EPA's finalization of the Action Memorandum. The meeting was scheduled for August 16, 1995. In telephone conversations with EPA I understood that the Agency planned on finalizing the Action Memorandum in late August to early September and, as scheduled, EPA would have had at least two weeks to consider the Companies' concerns and comments on the planned removal action. On August 15, 1995, while in transit to meet the Companies in Dallas, Texas, I received a phone message from Mr. Jim Costello indicating that EPA had to expedite the issuance of the Action Memorandum because of budgetary constraints and

1006020



that the Action Memorandum would be signed that day (August 15, 1995) in order to reserve funds for the Tar Creek Site.

While the Companies' representatives and I were able to meet briefly with EPA in the late afternoon of August 15, 1995 and again in the morning of August 16, 1995, the need to expedite the issuance of the Action Memorandum precluded EPA from seriously considering the Companies' comments on the planned removal action. The Companies are gravely concerned that the fear of losing funds for the Tar Creek Site caused EPA to make a hurried and technically unsupportable decision. While the Companies understand EPA's concern regarding the potential for excessive exposure to lead by certain residents based on the preliminary data collected by the Indian Health Service (IHS) showing that 35 percent of Native American children tested in the Tar Creek Site area had blood levels at or above 10 micrograms per deciliter (ug/dl), EPA acknowledged during the August meetings that the IHS study was not a scientifically sound study. Moreover, the IHS study did not take into account potential non-mining related exposures, such as lead-based paint. Finally, the IHS study contains no data to suggest that any significant fraction of the potentially excessive exposures to lead are in any way related to the currently identified HAAs that are subject to the planned removal action.

In fact, as documented in the memorandum from Mr. John Bell of Dames & Moore's Toxicology, Risk Assessment & Environmental Statistics Group, that was provided to EPA at our meeting (copy attached), even if a child spent two hours per day five days per week for 26 weeks per year (260 hours/year) at HAAs, the average soil lead concentration in the area where the child played at the HAAs would have to exceed 1200 mg/kg before EPA's IEUBK blood lead model predicted that the Center for Disease Control's (CDC's) target level for children's blood lead would be exceeded.

During the meeting on August 16, 1995, EPA criticized the analyses conducted by Dames & Moore because the IEUBK modeling used the model's default values for all exposures except for the exposures at the HAAs. While Dames & Moore understands EPA concerns, the purpose of the exercise was to evaluate the incremental risk associated with exposures at the HAAs where EPA was planning to take a time-critical removal action and not to evaluate the total lead risk associated with the site. The conclusion of that modeling was that the HAAs to be addressed by the planned removal action are not a significant source of lead exposure and do not warrant a removal action.

EPA has not released the results of the recently completed residential sampling and, consequently, site specific inputs were not available for Dames & Moore's analysis. Having all of the site-specific IEUBK input parameters would not change the conclusions of Dames & Moore's evaluation of the exposures at HAAs, but would allow for a detailed analysis of site risks and the relative contribution of the various sources to this risk. The Companies would consider having Dames & Moore conduct the site-wide lead exposure modeling, if EPA would utilize the results for decision making.

000544

Moreover, Darnes & Moore's evaluation was based on the CDC's target level of no more than 5 percent of the target children exceeding 10 ug/dl -- a more stringent level of protectiveness typically used by EPA for remedial actions rather than for time-critical removal actions. It is the Companies' understanding that the target level typically applied for time-critical removal action evaluations and for the establishment of removal action levels is 15 ug/dl, which is the blood lead level at which the CDC recommends intervention to prevent lead poisoning in children. As discussed and documented at our August meetings, ATSDR provided an evaluation of the appropriate time-critical soil removal action level for residential yards in the Cherokee County, Kansas and Jasper County, Missouri Superfund Sites, the other two mining related Superfund Sites located in the Tri-State Mining District. The evaluation was provided for EPA Region 7. In the ATSDR's Record of Activity dated May 8, 1995, (copy attached) ATSDR stated that 15 ug/dl is the blood level used in current time-critical removal evaluations and based on this, a soil lead-blood lead regression conducted by the Missouri Department of Health, dose response relationships at other lead sites and the EPA's IEUBK model, the ATSDR recommended a removal action level of 1500 mg/kg for residential areas within these two sites. Based on economic considerations, EPA Region 7 established the time-critical removal lead action level for these two related sites at 2500 mg/kg and ATSDR concurred that this removal level "would be beneficial in protecting not only children in the area, but gardeners as well."

Indeed, the original criteria for the time-critical removal action undertaken at residential areas at the two Region 7 sites required both a 500 mg/kg soil lead level and a child under 72 months of age with a blood lead level in excess of 15 ug/dl. EPA Region 7's criteria for time-critical removals were recently amended to include residential settings regardless of children's blood lead levels -- but the action level, as noted above, was increased to 2500 mg/kg. In contrast, the Action Memorandum in support of the planned Tar Creek HAAs removal action, specifies a lead action level of 500 mg/kg without any consideration of potential exposures to children or linkage to elevated blood lead levels. Indeed, the Action Memorandum fails to provide any technical support for the proposed removal action level of 500 mg/kg. At the two sites in Region 7, the only subset of HAAs with a removal action level of 500 mg/kg regardless of blood lead levels were daycare centers, due to the typically young age of children attending daycare centers, as well as the high frequency and duration of potential exposures at these facilities. Again, in contrast, the Action Memorandum for the planned action at issue provides no rationale for the universal use of the proposed 500 mg/kg lead removal level even though the likely exposures at most of the identified HAAs would be considerably less than those at residential settings, where EPA Region 7, with concurrence of ATSDR, chose a lead removal action level of 2500 mg/kg as protective of human health.

Based on data contained in a "Summary of Removal Response Activities, Tar Creek Site" that was distributed by EPA to the public at a Tar Creek Steering Committee Meeting on May 15, 1995, the average soil lead concentration at the 28 HAAs investigated by EPA was only about 450 mg/kg or below the currently proposed 500 mg/kg removal action level. Average soil lead concentrations exceeded 1000 mg/kg at only four HAAs and

none of the HAAs investigated by EPA had average soil lead concentrations above the 1500 mg/kg action level recommended by ATSDR for residential settings at the other Superfund Sites in the Tri-State Mining District.

Accordingly, because of the relatively low soil lead concentrations at the HAAs and the limited exposure to young children at most of the identified HAAs, the Companies believe that there is currently insufficient information to technically justify considering a remedial action at the HAAs, let alone a time-critical-removal action. As discussed in my letter to you dated May 26, 1995, the Companies believe that the only technically and legally supportable action is for EPA to defer actions at the Tar Creek until the on-going blood lead study is completed and the results of the study are publicly available. The blood lead study, if properly conducted, should provide the information necessary to fully evaluate EPA's concern with elevated blood lead levels in children, and to define the appropriate actions that should be taken to remediate any excessive lead exposures.

With regard to the other criteria for the Companies to consider taking action, the Companies believe that the information submitted in response to EPA's September 29, 1994 information request letter clearly documents that any potential human health threats that may be associated with the identified HAAs are not associated with past operations or activities of the Companies. Of the 28 HAAs investigated by EPA only one -- the Quapaw Elementary School -- appears to be located on a parcel of land on which a Respondent to the information request held a former property interest; however, no mill tailings were generated or disposed on this parcel of land during the period that the Respondent held the property rights. With respect to the other 27 HAAs, there is no connection to any activities conducted by any of the respondents and EPA's Notice Letter merely speculates that materials from Respondent's operations may have come to be located at the HAAs. That tenuous assertion is an insufficient basis to attribute the perceived risks to be addressed by the planned removal action to any of the Respondents.

Based on available information, the Quapaw Elementary School appears to be located on the 160 acre Betsy Greenback Quapaw Allotment. This allotment was part of the Quapaw-Davenport Property on which Federal Mining and Smelting Company (ASARCO) held a mining lease from 1925 to 1950. As discussed in the Joint Response Document prepared for EPA, all ore mined from the Quapaw-Davenport Property was processed at an existing mill located on the Joe Buffalo Allotment, the Gordon Central mill located on Harry A. Gordon Quapaw Allotment (Gordon Property) or at United Zinc Corporation's Royal mill located in the SE 1/4 SE 1/4 of Section 21, Township 29N, Range 23E. No information was discovered to suggest that Federal Mining and Smelting Company (ASARCO) produced, transported or deposited any mine waste at the Quapaw Elementary School or other portions of the Betsy Greenback Allotment. In fact, according to Mr. Gary Moore, EPA's Emergency Response Coordinator, the Quapaw School District arranged for the transport and deposition of the chat that is currently located at the Quapaw Elementary School.

September 6, 1995

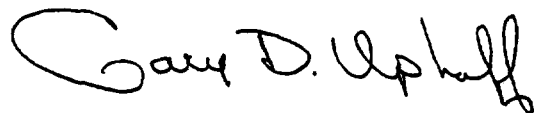
Summary and Conclusions

The Companies believe that there is no scientific evidence to demonstrate that there is a real threat to human health associated with the HAAs that EPA is proposing to address with a time-critical removal action. Further, the Companies believe that there is no information that past operations or activities of the Companies caused or are related to any potential human health threat that EPA believes it needs to address. Accordingly, the Companies respectfully decline EPA's offer to conduct or finance the planned removal action. In addition, the Companies strongly urge the EPA to reconsider its planned action and the needless expenditure of nearly two (2) million dollars.

000547

Thank you for your consideration of these comments and for including them in the administrative record for the Tar Creek Site.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Gary D. Uphoff". The signature is written in dark ink and is positioned above the printed name.

Gary D. Uphoff